

.08-2 Treatment of Trust Amounts.

A. (text unchanged)

B. Treatment of Trusts Established after August 10, 1993.

(1)—(5) (text unchanged)

(6) The following trusts may not be counted in determining eligibility for Medical Assistance:

(a) Special needs trusts as defined in §C of this regulation; and

[(b) A trust containing the assets of an individual who is disabled, and which meets all of the following conditions:

(i) The trust is established and managed by a nonprofit association,

(ii) A separate account is maintained for each beneficiary of the trust but, for purposes of investment and management of funds, the trust pools these accounts,

(iii) Accounts in the trust are established solely for the benefit of disabled individuals by the parent, grandparent, or legal guardian of the individuals, by the individuals, or by a court, and

(iv) To the extent that amounts remaining in the beneficiary's account upon the death of the beneficiary are not retained by the trust, the trust pays to the Department from the amounts remaining in the account an amount equal to the total amount of Medical Assistance paid on behalf of the beneficiary]

(b) Pooled trusts as defined in Regulation .08-4 of this chapter.

C. Special Needs Trust. The following criteria shall define a special needs trust:

(1) (text unchanged)

(2) The trust states that the beneficiary is disabled under Regulation [.05E] .05-4C of this chapter;

(3)—(8) (text unchanged)

(9) An individual may fund a special needs trust for the individual's child with a disability without a transfer penalty and regardless of the child's age;

(10) All legally assignable income or resources may be assigned to a special needs trust without limit;

[(9)] *(11) The trust contains the following provisions:*

(a) Additions may not be made to the trust after the beneficiary is 65 years old *unless*:

(i) *Such additions are from an annuity or other structured settlement;*

(ii) *The annuity or other structured settlement contains the irrevocable assignment of the right to receive payments from the annuity or structured settlement to the trust; and*

(iii) *The irrevocable assignment from the annuity or other structured settlement to the trust is made before the beneficiary became 65 years old;*

(b) Expenditures from the trust shall be used for the sole benefit of the beneficiary [and shall be directly related to] *including, at the trustee's discretion, distributions for the beneficiary's health care, education, comfort, food, shelter, utilities, transportation, or support;*

(c) – (n) (text unchanged)

(o) Trust assets may not be used to purchase an annuity on the life of the beneficiary unless the annuity provides that,[:

(i) The final payment to the trust shall be made before the beneficiary is 65 years old; and

(ii) If] *if the beneficiary dies before the final payments have been made, the remaining payments shall be paid directly to the State until the total Medical Assistance benefits paid on behalf of the beneficiary have been reimbursed;*

(p)—(u) (text unchanged)

(v) The trust may not receive payments from an annuity or a structured settlement that may provide lump sum or periodic payments unless: [the annuity or settlement provides that:

(i) The final payment to the trust is received before the beneficiary is 65 years old; and]

(i) *The annuity irrevocably assigns to the trust the right to receive payments from the annuity;*

(ii) *The irrevocable assignment to the trust was made before the beneficiary attained age 65; and*

[(ii)] (iii) (text unchanged)

(w) *If there is any change to the trustee or co-trustee named in the trust, or a successor trustee is appointed, the new or successor trustee shall, within 10 days of execution of the change, notify the Division of Recoveries and Financial Services in writing of the name and contact information of the new or successor trustee; and*

(x) *A clear and unambiguous notice to the trust beneficiary that, although State law permits trust assets to be used, in the trustee's discretion, towards food and shelter, use of trust assets for these purposes may jeopardize the beneficiary's eligibility for benefits provided by the Social Security Administration, including Supplemental Security Income (SSI), and the loss of the beneficiary's SSI eligibility may impact the beneficiary's Medical Assistance eligibility;*

[(10)] (12)—[(11)] (13) (text unchanged)

BEGIN NEW

08-4 Pooled Trust.

- A. An individual account in a pooled asset special needs trust may be funded without financial limit.
- B. An individual may establish or fund an individual account in a pooled asset special needs trust without an age limit or transfer penalty.
- C. All legally assignable income or resources may be assigned to a pooled asset special needs trust without limit.
- D. The trust may not contain provisions that conflict with the policies set forth under this regulation.
- E. The trust shall be established, held and managed by a nonprofit organization recognized by United States Internal Revenue Service.
- F. Separate accounts shall be maintained for each beneficiary, but the funds of each sub-account may be pooled for purposes of investment and management.
- G. The trust contains the following provisions:
 - (1) The trust is irrevocable;
 - (2) The trust states that the beneficiary is disabled under Regulation .05-4C of this chapter;
 - (3) Each trust sub-account shall be established by the sub-account beneficiary, the sub-account beneficiary's parent, grandparent or legal guardian, or by a court;
 - (4) Additions may be made to the trust without penalty, provided that, if the additions are made by an annuity, the annuity irrevocably assigns to the trust the right to receive payments from the annuity;
 - (5) Expenditures from the trust shall be used for the sole benefit of each beneficiary including, at the trustee's discretion, distributions for a beneficiary's health care, education, comfort, food, shelter, utilities, transportation, or support;
 - (6) No trust beneficiary may serve as trustee, cotrustee, trust protector, trust advisor, or in any other capacity that would allow the beneficiary to influence or exercise authority or control over distributions from the trust or any sub-account;
 - (7) The trustee shall administer the trust in accordance with the provisions of Estates and Trusts Article, §15-502, Annotated Code of Maryland, and may not:
 - (a) Have an interest in trust assets;

- (b) Have discretion to use trust assets for the trustee's own benefit;
 - (c) Self-deal by selling trust assets to the trustees or buying trust assets from the trustee; or
 - (d) Loan trust assets to the trustee;
- (8) Compensation to the trustee shall be limited in accordance with the provisions of Estates and Trusts Article, §14-103, Annotated Code of Maryland;
- (9) Any leases or mortgages that the trust may hold shall contain a provision that they either terminate or become due and payable upon termination of the trust;
- (10) If the trust owns titled property that is valued at more than \$500, the property shall be titled in the name of the trust, except for securities, which may be held in the name of a nominee;
- (11) If the trust owns an asset jointly with another, the ownership shall be as tenants in common, and the ownership agreement shall provide that, upon termination of the trust, the property shall either be sold for fair market value or the other owners shall purchase the trust's interest in the property for fair market value;
- (12) Trust assets may not be held as an ongoing business or enterprise, or as investments in new or untried enterprises;
- (13) Trust distributions may not be used to supplement Medical Assistance payments to any health care provider delivering covered items or services to any beneficiary;
- (14) Trust assets may not be used to compensate family members of any beneficiary for serving any beneficiary in any way, including caring for the beneficiary, accompanying the beneficiary on travel, providing companionship to the beneficiary, or serving as trustees or members of a trust advisory committee;
- (15) Trust assets may not be used to purchase gifts;
- (16) Trust assets may not be used to purchase a life insurance policy on the life of any beneficiary;
- (17) Trust assets may only be used to purchase a life insurance policy on the life of someone other than a trust beneficiary if the trust is the only beneficiary of the life insurance policy;
- (8) Trust assets may not be used to purchase an annuity on the life of any beneficiary unless the annuity provides that, if the beneficiary dies before the final payments have been made, the remaining payments shall be paid directly to the State until the total Medical Assistance benefits paid on behalf of the beneficiary have been reimbursed;
- (19) The trust may not loan trust assets without security, which may include an interest in real or personal property of at least equivalent value;

(20) The trust may only make loans if the loan agreement provides for immediate repayment upon termination of the trust for any other reason;

(21) The trust may only invest in a single piece of real property for each beneficiary, which is:

(a) A single home property that is used as the residence of the beneficiary; and

(b) Titled in the name of the trust;

(22) The trust may not disburse more than \$100,000 for the purchase of property on behalf of any beneficiary without the approval of the State circuit court in the jurisdiction in which such beneficiary resides;

(23) An annual accounting of the trust and each sub-account, including a listing of current assets, income, and itemized distributions during the previous year, shall be sent to the Division of Recoveries and Financial Services;

(24) Trust assets may not be used to pay funeral expenses of any beneficiary but may be used to purchase an irrevocable burial contract for each beneficiary to cover such beneficiary's funeral and burial expenses;

(25) The trust may not receive payments from an annuity or a structured settlement that may provide lump sum or periodic payments unless the annuity or settlement provides that:

(a) The annuity irrevocably assigns to the trust the right to receive payments from the annuity;

(b) The irrevocable assignment to the trust was made before the beneficiary attained age 65; and

(c) The annuity provides that if the beneficiary dies before the final payments have been made, the remaining payments shall be paid directly to the State until the total Medical Assistance benefits paid on behalf of the beneficiary have been reimbursed;

(26) A clear and unambiguous notice to trust beneficiaries that, although State law permits trust assets to be used, in the trustee's discretion, towards food and shelter, use of trust assets for these purposes may jeopardize the beneficiary's eligibility for benefits provided by the Social Security Administration, including Supplemental Security Income (SSI), and the loss of the beneficiary's SSI eligibility may impact the beneficiary's Medical Assistance eligibility;

(27) The trustee shall provide the Division of Recoveries and Financial Services copies of each joinder agreement under which individual beneficiaries join and pool their assets with the pooled trust and form trust sub-accounts;

(28) If there is any change to the trustee or co-trustee named in a pooled trust, or a successor trustee is appointed, the new or successor trustee shall, within 10 days of execution of the change, notify the Division of Recoveries and Financial Services in writing of the name and contact information of the new or successor trustee;

(29) The trustee shall report every 3 years in writing to the Division of Recoveries and Financial Services the amount of money required to maintain the trust's solvency after payment of fees and expenses; and

(30) To the extent the amount remaining in the trust exceeds the amount reported by the trustee in § H29 of this regulation, the trustee shall distribute to the Department all amounts remaining in a beneficiary's sub-account upon the death of the beneficiary, or upon termination of the trust or the beneficiary's sub-account for any other reason, up to an amount equal to the total Medical Assistance benefits paid on behalf of the beneficiary.

H. A pooled trust joinder agreement under which an individual establishes a sub-account and becomes a beneficiary of the pooled trust shall provide:

(1) If the amount remaining in the trust exceeds the amount required to maintain the trust's solvency as reported every 3 years by the trustee to the Division of Recoveries and Financial Services, the Department shall receive all amounts remaining in the sub-account upon the death of the beneficiary, or upon termination of the trust or sub-account for any other reason, up to an amount equal to the total Medical Assistance benefits paid on behalf of the beneficiary; and

(2) A clear and unambiguous notice to sub-account beneficiaries that, although State law permits trust assets to be used, in the trustee's discretion, towards food and shelter, use of trust assets for these purposes may jeopardize the beneficiary's eligibility for benefits provided by the Social Security Administration, including Supplemental Security Income (SSI), and the loss of the beneficiary's SSI eligibility may impact the beneficiary's Medical Assistance eligibility.

I. If any amendments are made to the trust, the amendments shall comply with this section and a copy of the amendments shall be sent to the Division of Recoveries and Financial Services.

J. If the trust or a trust joinder agreement fails to comply with any provision of this section, the full value of the assets of the sub-account shall be considered available resources of the sub-account trust beneficiary for Medical Assistance eligibility purposes.

END NEW